

or taken when the Collector, prior to February 26, 1926, made the entries upon his books, and that consequently interest on the credits should be calculated under the provisions of the Act of 1924. We hold, in conformity with our decision in *United States v. Swift & Co.*, *supra*, that the allowance occurred April 15, 1926, when the Commissioner finally acted on the schedule of refunds and credits. The judgment is

*Affirmed.*

## RUSSIAN VOLUNTEER FLEET *v.* UNITED STATES.

### CERTIORARI TO THE COURT OF CLAIMS.

No. 39. Argued December 12, 1930.—Decided February 24, 1931.

1. When the United States expropriates the property of an alien friend, the Fifth Amendment requires that it pay just compensation equivalent to the full value of the property contemporaneously with the taking. P. 489.
2. This constitutional right of the alien does not depend upon whether the government of his country renders compensation to our citizens in like cases or upon whether that government is recognized as such by our own. P. 491.
3. The Act of June 15, 1917, which provided for war-time expropriation of ships, etc., and for payment of just compensation, expressly entitling the property owner, if dissatisfied with the amount fixed by the President, to accept 75% thereof and to sue the United States in the Court of Claims under Jud. Code § 145, for such further sum as will make up just compensation, should not be construed as limited, with respect to alien suitors, by Jud. Code § 155, which provides that "Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction."

So held in the case of a Russian corporation, where the property was taken under the 1917 Act after the recognition by the United States of the Provisional Government of Russia, successor to the

Imperial Government of that country, and where the suit was brought after the overthrow of the Provisional Government, which has no recognized successor. P. 491.

4. Where a statute presents no difficulty if read according to its terms, a condition that would raise a grave question of its constitutionality should not be implied. P. 492.

68 Ct. Cls. 32, reversed.

CERTIORARI, 281 U. S. 711, to review a judgment of the Court of Claims rejecting a claim for want of jurisdiction.

Mr. William L. Rawls, with whom Messrs. Charles Recht, Horace S. Whitman, William L. Marbury, Jr., and Osmond K. Fraenkel were on the brief, for petitioner.

The petitioner is a juristic person with capacity to sue. The United States dealt with it as a legal entity and as owner of the property. Just compensation to it was fixed under the order of August 31, 1917. Since that time the United States Government has had numerous dealings with the Russian Volunteer Fleet as such and has even brought suit against the corporation. See *United States v. Russian Volunteer Fleet*, 22 F. (2d) 187.

The Department of State still recognizes the representative of the Provisional Russian Government as the accredited representative of the State of Russia.

But the overthrow of a Government does not carry with it the extinction of private rights, *Vilas v. Manila*, 220 U. S. 345, nor destroy the State. The continued existence of the State of Russia has been clearly recognized in *Russian Government v. Lehigh Valley R. Co.*, 293 Fed. 133; *id.*, 135; writ of prohibition denied, 265 U. S. 573; *Lehigh Valley R. Co. v. Russia*, 21 F. (2d) 396, certiorari denied, 275 U. S. 571.

Petitioner has alleged its continued existence as a corporation under the laws of the Soviet Government, but even were the fact otherwise, as in those cases where the Soviet Government has attempted to destroy the corporate entity, the continued existence of the corporation for the

purpose of bringing suit to collect its assets would be presumed by the courts here, in the absence of recognition by our Government of the validity of the decrees of the Soviet Government. *Petrogradsky W. K. Bank v. National City Bank*, 253 N. Y. 23; *Russian C. & I. Bank v. Comptoir d'Escompte de Mulhouse*, (1925) A. C. 112, (1923) 2 K. B. 630; *Banque v. Goukassow*, (1925) A. C. 150, (1923) 2 K. B. 682.

Even though no payment has been made to petitioner, the Act of June 15, 1917, is broad enough to cover this case. Similar suits have been entertained. *United States v. Carver*, 278 U. S. 294; *Seaboard Air Line v. United States*, 261 U. S. 299; *Houston Coal Co. v. United States*, 262 U. S. 361; *United States v. McNeil & Sons*, 267 U. S. 302.

The Act of 1917 must be so construed as to harmonize with the Fifth Amendment. If so construed as to deny just compensation to persons whose property is taken under it, it would be unconstitutional. *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106; *Seaboard Air Line v. United States*, 261 U. S. 299; *Phelps v. United States*, 274 U. S. 341. An alien is entitled to the protection of the Fifth Amendment. *Wong Wing v. United States*, 163 U. S. 228, 242; *Truax v. Raich*, 239 U. S. 33, 39.

The case is governed by *Richmond Screw Anchor Co. v. United States*, 275 U. S. 331.

Limitations expressing broad purposes contained in general Acts enacted many years ago, should not be read into special war legislation in such a manner as to limit its remedial character. *United States v. Pfitsch*, 256 U. S. 547; *Nassau Smelting Works v. United States*, 266 U. S. 101; *United States v. Skinner & Eddy Corp.*, 35 F. (2d) 889.

Section 155 of the Judicial Code, like § 3477 of the Revised Statutes discussed in the *Richmond Company Case*, *supra*, is a limiting Act, taking away rights thereto-

fore conferred upon aliens, and is not an enabling Act as the Court of Claims seems to have supposed. Section 155 does not limit the right to sue the United States to citizens of recognized governments. Its history makes clear that the Act did not confer special privileges on aliens, but took away from certain classes privileges which had theretofore been conferred upon them.

The decisions of this Court have condemned the practice of importing into an Act of Congress seriously affecting international relations, words which it does not contain. *The Three Friends*, 166 U. S. 1.

If petitioner's right is dependent upon § 155 of the Judicial Code, petitioner should be permitted to establish as a matter of fact that the present Russian Government allows suits to be brought against it by citizens of the United States.

A judicial determination that there was in fact a Government in Russia known as the Union of Soviet Socialist Republics, and that such government as a matter of fact carried on the ordinary functions of any civilized government, is not in the least an infringement upon the prerogatives of the Department of State. *United States v. Palmer*, 3 Wheat. 610; *Consul of Spain v. La Conception*, Fed. Cas. No. 3137; *Yrissari v. Clement*, 3 Bing. 432. See also, *Texas v. White*, 7 Wall. 700; *Thorington v. Smith*, 8 Wall. 1; *United States v. Insurance Companies*, 22 Wall. 99; *Williams v. Bruffy*, 96 U. S. 176; *Baldy v. Hunter*, 171 U. S. 388; *MacLeod v. United States*, 229 U. S. 416; *Wulfsohn v. Russian Soviet Republic*, 234 N. Y. 372; *Nankivel v. Omsk All Russian Government*, 237 N. Y. 150; *Sokoloff v. National City Bank*, 239 N. Y. 158; *Russian Reinsurance Co. v. Stoddard*, 240 N. Y. 149; *Joint Stock Co. v. National City Bank*, 240 N. Y. 368; *Petrogradsky Bank v. National City Bank*, 253 N. Y. 23; *Banque de France v. Equitable Trust Co.*, 33 F. (2d) 202; *Rossia Ins. Co. v. United States*, 58 Ct. Cls. 180. Practically all of the

writers who have had occasion to discuss this subject have come to the same conclusion: Hervey, *Legal Effects of Recognition in International Law*; Dickinson, *The Unrecognized Government or State in English and American Law*, 22 Mich. L. R. 29; Fraenkel, *The Juristic Status of Foreign States*, 25 Col. L. R. 544; Connick, *The Effect of Soviet Decrees in American Courts*, 34 Yale L. J. 499; Houghton, *The Validity of the Acts of Unrecognized Governments*, 13 Minn. L. R. 216; 35 Harv. L. R. 607, 768; 37 *id.* 606; 38 *id.* 816, 832; 39 *id.* 127; 41 *id.* 102; 35 Yale L. J. 98, 150, at 155; 30 Col. L. R. 225.

*Mr. Claude R. Branch*, Special Assistant to the Attorney General, with whom *Solicitor General Thacher*, Assistant Attorney General *Rugg* and Messrs. *Percy M. Cox*, *Erwin N. Griswold*, *H. Brian Holland*, *Green H. Hackworth*, Solicitor, Department of State, and *Francis M. Anderson*, Assistant Solicitor, were on the brief, for the United States.

The Government submits the case on the opinion of the Court of Claims. Although we do not confess error, we are of the opinion that § 155 of the Judicial Code is not applicable. The Act of June 15, 1917, does not mention § 155, and we think it doubtful whether Congress intended to make the right to sue dependent upon the conditions set forth in § 155. A case involving other statutes relating to suits in the Court of Claims supports the contention that § 155 is not applicable. *Richmond Screw Anchor Co. v. United States*, 275 U. S. 331.

Moreover, there would seem to be grave doubt as to the constitutionality of the Act of June 15, 1917, as construed by the Court of Claims.

If § 155 of the Judicial Code is applicable, we submit that the decision of the Court of Claims was correct. This Government has not recognized any régime which has been functioning as a Government in Russia since 1917. It follows that if the petitioner is a citizen of Russia, it is not a citizen "of any Government" within the meaning of

§ 155, and that the courts in this country can not find that judicial remedies against the Russian Government exist in Russia.

A further question may be suggested, and that is whether a corporation which purports to be a citizen of "the Union of Soviet Socialist Republics" has such a legal existence as to bring suit in any court. But we are of the opinion that this question is not now before this Court. The petition filed in the Court of Claims describes the petitioner as a corporation "duly organized under, and by virtue of, the Laws of Russia." As the record avers facts showing that it was in existence under the regime of the Imperial Russian Government, it can not be assumed without proof that it now has no corporate existence. A recent well-considered case held that such a corporation may bring suits in the courts in this country. *Petrogradsky M. K. Bank v. National City Bank*, 253 N. Y. 23. The mere statement that the petitioner is a citizen of "the Union of Soviet Socialist Republics," in its brief, which is not a part of the record, would hardly seem to be sufficient ground for dismissing the case. Whether any corporation created by this so-called Republic can sue is a question which requires more information about the subject than can be obtained either from this record or judicial notice of political acts. Similarly, the question whether the suit is being prosecuted by persons having proper authority from the corporation, alleged to be entitled to compensation, is a matter which can not be determined at the present time.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

The petitioner brought this suit against the United States in the Court of Claims to recover just compensation for the requisitioning by the United States Shipping Board Emergency Fleet Corporation, under authority

delegated to it by the President, of contracts for the construction of two vessels. The Court of Claims dismissed the petition for the want of jurisdiction. 68 Ct. Cls. 32. This Court granted a writ of certiorari. 281 U. S. 711.

The petition, filed in October, 1924, alleged that the petitioner "is a corporation duly organized under, and by virtue of, the Laws of Russia"; that in January, 1917, the petitioner became the assignee for value of certain contracts for the construction of two vessels by the Standard Shipbuilding Corporation of New York; that in August, 1917, the United States Shipping Board Emergency Fleet Corporation, acting under the authority conferred by the Act of June 15, 1917 (c. 29, 40 Stat. 183) and by the Executive Order of the President of the United States made on July 11, 1917, requisitioned these contracts, and the vessels being constructed thereunder, for the use of the United States; that the United States thereby became liable to the petitioner for the payment of just compensation; that in August, 1919, the petitioner submitted its affidavit of claim, and vouchers in support; that in March, 1920, the United States Shipping Board Emergency Fleet Corporation fixed the just compensation of the petitioner at a total amount of \$1,412,532.35; that the value of the contracts taken from the petitioner was \$4,000,000, to which the petitioner was entitled after allowing all proper credits and offsets; and that "citizens of the United States are and at the time of and since the commencement of this suit have been accorded the right to prosecute claims against the Russian Government in the Court of that Government."

In May, 1927, the petitioner filed motions to issue commissions to take testimony in Germany and France; the defendant objected, and the motions were overruled. The petitioner then gave notice of the taking of testimony in Washington, D. C., whereupon the defendant moved to quash the notice upon the ground that the

Court was without jurisdiction of the subject matter of the proceeding. On the submission of that motion, the petition was dismissed. The Court of Claims held that, as the United States Government had not recognized the Union of Soviet Socialist Republics in Russia, the petitioner was not entitled to maintain its suit in view of section 155 of the Judicial Code (U. S. C., Tit. 28, § 261). That section is as follows: "Sec. 155. Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction." The court said that the reference to citizens or subjects of "any government" meant such governments as were recognized by the proper authorities of the United States.

The Government in its argument here, while submitting the case on the opinion of the Court of Claims and not confessing error, presents the view that section 155 of the Judicial Code does not apply to this suit, which was brought under the provisions of the Act of June 15, 1917. With respect to the matter of recognition, the Government appends to its brief a letter of the Secretary of State of the United States, under date of December 5, 1930, stating that "the Provisional Government of Russia, the successor of the Imperial Government of Russia, was recognized by the Government of the United States on March 22, 1917"; that, "according to the Department's information, the Provisional Government of Russia was overthrown by an armed uprising which took place in the early part of November, 1917," and that "the Government of the United States has not extended recognition to any régime established in Russia subsequent to the overthrow of the Provisional Government."



As the facts alleged in the petition were admitted by the motion to dismiss, the allegation that the petitioner is a corporation duly organized under the laws of Russia stands unchallenged on the record. There was no legislation which prevented it from acquiring and holding the property in question. The petitioner was an alien friend, and as such was entitled to the protection of the Fifth Amendment of the Federal Constitution. *Wong Wing v. United States*, 163 U. S. 228, 238; compare *Yick Wo v. Hopkins*, 118 U. S. 356, 369; *Santa Clara County v. Southern Pacific R. Co.*, 118 U. S. 394, 396; *Truax v. Raich*, 239 U. S. 33, 39; *Terrace v. Thompson*, 263 U. S. 197, 216; *Home Insurance Co. v. Dick*, 281 U. S. 397, 411. Exerting by its authorized agent the power of eminent domain in taking the petitioner's property, the United States became bound to pay just compensation. *United States v. Great Falls Mfg. Co.*, 112 U. S. 645, 656; *United States v. North American Co.*, 253 U. S. 330, 333; *Campbell v. United States*, 266 U. S. 368, 370, 371; *Phelps v. United States*, 274 U. S. 341, 343, 344; *International Paper Co. v. United States*, *ante*, p. 399. And this obligation was to pay to the petitioner the equivalent of the full value of the property contemporaneously with the taking. *Phelps v. United States*, *supra*; *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106, 123.

The Congress recognized this duty in authorizing the expropriation. The Act of June 15, 1917, under which the requisition was made, provided for the payment of just compensation. The Congress did not attempt to give to any officer or administrative tribunal the final authority to determine the amount of such compensation<sup>1</sup>, and recovery by suit against the United States was

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<sup>1</sup> See *United States v. Jones*, 109 U. S. 513, 519; *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 327; *Long Island Water Supply Co. v. Brooklyn*, 166 U. S. 685, 695; *Backus v. Fort Street Union Depot Co.*, 169 U. S. 557, 559; *United States v. Bab-*

made an integral part of the legislative plan of fulfilling the constitutional requirement. The Act provided as follows: "Whenever the United States shall . . . requisition any contract, . . . requisition, acquire or take over . . . any ship, . . . in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code." Section 24, paragraph 20, of the Judicial Code, U. S. C., Tit. 28, § 41, subd. (20), gives jurisdiction to the District Courts of the United States, concurrent with the Court of Claims, of claims against the United States not exceeding \$10,000, founded upon the Constitution, or any law of Congress, or upon any contract, express or implied, with the Government of the United States, when the claimant would be entitled to redress against the United States in a court of law, equity, or admiralty, if the United States were suable. The case of an alien friend is not excepted. Section 145 of the Judicial Code (U. S. C., Tit. 28, § 250) gives to the Court of Claims jurisdiction of suits on similar claims against the United States without limit of amount. The authority con-

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*cock*, 250 U. S. 328, 331; *Bragg v. Weaver*, 251 U. S. 57, 59; *Seaboard Air Line Ry. Co. v. United States*, 261 U. S. 299, 304; *North Laramie Land Co. v. Hoffman*, 268 U. S. 276, 285, 286; *Great Northern Ry. Co. v. United States*, 277 U. S. 172, 182; *Dohany v. Rogers*, 281 U. S. 362, 369.

ferred upon the President by the Act of June 15, 1917, was exercised by him through the United States Shipping Board Emergency Fleet Corporation, and as the compensation fixed by that Corporation was not satisfactory to the petitioner, it became entitled under the express terms of the Act to bring suit against the United States to recover the amount justly payable by reason of the requisition.

The Act of June 15, 1917, makes no reference to section 155 of the Judicial Code with respect to alien suitors, and the question is whether that provision should be implied as establishing a condition precedent and the recovery thus be defeated. It is at once apparent that such an implication would lead to anomalous results. It would mean that, although the United States had actually taken possession of the property and was enjoying the advantages of its use, and the alien owner was unquestionably entitled to compensation at the time of the taking, it was the intention of the Congress that recovery should be denied, or at least be indefinitely postponed until the Congress made some other provision for the determination of the amount payable, if it appeared that citizens of the United States were not entitled to prosecute claims against the government of the alien's country in its courts, or that the United States did not recognize the régime which was functioning in that country.

We find no warrant for imputing to the Congress such an intention. "Acts of Congress are to be construed and applied in harmony with and not to thwart the purpose of the Constitution." *Phelps v. United States, supra*. The Fifth Amendment gives to each owner of property his individual right. The constitutional right of owner A to compensation when his property is taken is irrespective of what may be done somewhere else with the property of owner B. As alien friends are embraced within

the terms of the Fifth Amendment, it cannot be said that their property is subject to confiscation here because the property of our citizens may be confiscated in the alien's country. The provision that private property shall not be taken for public use without just compensation establishes a standard for our Government which the Constitution does not make dependent upon the standards of other governments. The Act of Congress should be interpreted in the light of its manifest purpose to give effect to the constitutional guaranty.

Nor do we regard it as an admissible construction of the Act of June 15, 1917, to hold that the Congress intended that the right of an alien friend to recover just compensation should be defeated or postponed because of the lack of recognition by the Government of the United States of the régime in his country. *A fortiori*, as the right to compensation for which the Act provided sprang into existence at the time of the taking, there is no ground for saying that the statute was not to apply, if at a later date, and before compensation was actually made, there should be a revolution in the country of the owner and the ensuing régime should not be recognized. The question as presented here is not one of a claim advanced by or on behalf of a foreign government or régime, but is simply one of compensating an owner of property taken by the United States.

The Act of June 15, 1917, if read according to its terms, presents no difficulty. A condition should not be implied which, to say the least, would raise a grave question as to the constitutional validity of the Act. *Federal Trade Comm. v. American Tobacco Co.*, 264 U. S. 298, 307; *Missouri Pacific R. Co. v. Boone*, 270 U. S. 466, 471, 472; *Blodgett v. Holden*, 275 U. S. 142, 148; *Richmond Screw Anchor Co. v. United States*, 275 U. S. 331, 346; *Lucas v. Alexander*, 279 U. S. 573, 577.

*Judgment reversed.*